

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND CO. and
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 09-cv-0686 (ERW)

**DEFENDANTS' RESPONSE AND COUNTER-PROPOSAL TO
MONSANTO'S MOTION TO MODIFY THE SCHEDULING ORDER**

Defendants E.I. du Pont de Nemours and Co. and Pioneer Hi-Bred International, Inc. (collectively, "Defendants") respectfully submit this counterproposal to Monsanto's Motion to Modify the Scheduling Order (Dkt. # 345).

Monsanto seeks to extend the discovery period in this case by two months, and further to extend other dates including the date for the jury trial of the patent and contract issues by almost **three months**. Monsanto's only explanation is that, despite being the plaintiff, and despite filing this action nearly 16 months ago, Monsanto is unable to comply with the Court's scheduling order for the completion of document production.¹ To date, Monsanto has produced only a relatively small number of documents, totaling fewer than 100,000 pages. Defendants, on the other hand, processed more electronic data than Monsanto, had more documents reviewed, have already produced more documents, and nevertheless are prepared to comply with the Court's

¹ The Court has informally extended the original date for the completion of the parties' document production by one week, to September 22, 2010, to allow the parties to present this issue to the Court and seek the Court's guidance.

deadline. They were able to do so not because Monsanto's discovery requests were less burdensome, but because they took the Court's scheduling order seriously and deployed far more assets and employed far more reviewers.

Given that Monsanto filed its motion only mid-day today, the day before the Court's already-scheduled telephone conference for tomorrow, DuPont & Pioneer respond by setting aside the task of responding to Monsanto's easily refuted reasons for failing to comply and instead offer a compromise schedule, which is similar to a compromise presented to Monsanto this past Monday.

The key element of Defendants' proposal is that the trial date on the patent and contract claims previously set by the Court does not change. As Defendants have previously advised the Court and Monsanto, keeping the current September 12, 2011 trial date is paramount to them. Defendants' counterproposal extends patent and contract related discovery by approximately one month and the antitrust related discovery even longer. DuPont & Pioneer believe this proposal gives Monsanto the extra time it requests while avoiding prejudice to their interests by preserving the patent and contract trial date:

<u>Event</u>	<u>Current Date</u>	<u>Extended Date</u>
Parties' Document Productions Completed	9/15/2010	10/14/2010 (rolling production)
Final Day of Patent and Contract Fact Discovery	11/30/2010	1/5/2011
Final Day of Antitrust Fact Discovery	11/30/2010	3/23/2011
Patent and Contract Expert Reports	1/5/2011	1/31/2011
Antitrust Expert Reports	1/5/2011	4/28/2011
Patent and Contract Rebuttal Expert Reports	2/9/2011	3/7/2011
Antitrust Rebuttal Expert Reports	2/9/2011	6/3/2011
Final day of Patent and Contract Expert Discovery	3/23/2011	4/15/2011
Final day of Antitrust Expert Discovery	3/23/2011	7/15/2011
Patent and Contract Dispositive Motions	4/6/2011	5/15/2011
Oppositions to Patent and Contract Dispositive Motions	5/6/2011	6/29/2011

<u>Event</u>	<u>Current Date</u>	<u>Extended Date</u>
Replies to Patent and Contract Dispositive Motions	6/6/2011	7/13/2011
Antitrust Dispositive Motions		8/15/2011
Joint Stipulation Of Uncontested Facts; Witness and Exhibit Lists, Deposition; and Designations and Jury Instructions for Patent and Contract Trial	8/23/2011	8/23/2011 No Change
Objections to Deposition Designations for Patent and Contract Trial	8/26/2011	8/26/2011 No Change
Pretrial Conference: Exhibits and Jury Instructions for Patent and Contract Trial	9/1/2011	9/01/2011 No Change
Trial Patent and Contract Case	9/12/2011	9/12/2011 No Change
Oppositions to Antitrust Dispositive Motions		9/15/2010
Replies to Antitrust Dispositive Motions		10/17/2010
Joint Stipulation Of Uncontested Facts; Witness and Exhibit Lists; and Deposition Designations and Jury Instructions for Antitrust Trial		11/29/2011
Objections to Deposition Designations for Antitrust Trial		12/2/2011
Pretrial Conference: Exhibits and Jury Instructions for Antitrust Trial		12/5/2011
Trial Antitrust Case		12/12/2011

We will be prepared to discuss any of the points raised in Monsanto's motion with the Court tomorrow during the scheduled telephone conference if the Court desires further discussion on any point.

Dated: September 16, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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